

UNITED STATES DISTRICT COURT

for the
District of New MexicoFILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO

SEP 22 2021

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*
 1999 Honda Civic, bearing Colorado license plate
 number 632VIO, vehicle identification number (VIN)
 2HGEJ8648XH555071

)

Case No. 21-MR-1360

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (*identify the person or describe the property to be searched and give its location*):

1999 Honda Civic, bearing Colorado license plate number 632VIO, vehicle identification number (VIN)
 2HGEJ8648XH555071

located in the _____ District of New Mexico, there is now concealed (*identify the person or describe the property to be seized*):

See Attachment B of Affidavit

The basis for the search under Fed. R. Crim. P. 41(c) is (*check one or more*):

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section	Offense Description
18 USC 1153	Offenses committed in Indian country
18 USC 1112	Involuntary manslaughter

The application is based on these facts:

See Attached Affidavit hereby incorporated by reference as if fully restated herein.

- Continued on the attached sheet.
- Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Alyson Berry, Special Agent, FBI

Printed name and title

Judge's signature

B. Paul Briones, US Magistrate Judge

Printed name and title

Sworn to before me and signed in my presence.

Date: 09.22.2021

City and state: Farmington, NM

KN/AUSA

NEW MEXICO
ALBUQUERQUE, NEW MEXICO

State of New Mexico)
County of San Juan)

AFFIDAVIT

I, Alyson Berry being duly sworn, hereby, depose and state as follows:

1. I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI) and have been employed in that capacity since July 2020. I am currently assigned to the Albuquerque Division, Farmington Resident Agency of the FBI, and have primary investigative responsibility in violent crimes such as robbery, assault, crimes involving children and homicide occurring in Indian Country.
2. The information set forth in this affidavit has been derived from an investigation conducted by the Farmington Resident Agency of the FBI, Navajo Nation Department of Criminal Investigations (NNDCI), the Navajo Police Department, and the New Mexico State Police (NMSP).
3. On September 16, 2021, the Farmington Resident Agency of the FBI was notified by the NNDCI of a single vehicle crash that occurred on the Navajo Indian Reservation earlier that same day. Two adult males were in the vehicle when the driver lost control. The vehicle rolled several times, and the occupants were ejected from the vehicle. Keanu Upshaw, referred to herein as "Upshaw," was driving the vehicle. Upshaw was transported to San Juan Regional Medical Center where he was treated for broken bones and other injuries from the crash. The passenger of the vehicle, Tyler Johnson, was killed as a result of the crash.
4. Blood tests of Upshaw conducted at San Juan Regional Medical Center showed a blood alcohol level of .180 at 5:50 a.m., approximately 80 minutes after the accident. At the scene of the vehicle accident, Upshaw told Navajo Police Department officers he drove drunk and asked about the status of his passenger.
5. On September 17, 2021, your affiant and Criminal Investigator Jefferson Joe interviewed Upshaw

at San Juan Regional Medical Center. Upshaw began drinking Corona and hard liquor at approximately 4:00p.m. on September 16, 2021. His girlfriend drove his vehicle until around 11:00 p.m. Then she went home, and Upshaw began driving. Upshaw drove himself and Johnson to Farmington from Shiprock. The two continued to drink rum and vodka in the Walmart parking lot, and the accident occurred several hours later as they were headed back to Shiprock.

6. The vehicle involved in the crash, a 1999 Honda Civic, bearing Colorado license plate number 632VIO, vehicle identification number (VIN) 2HGEJ8648XH555071, registered to Jessie Herrera, (referred to herein as the “Target Vehicle”), was seized by law enforcement and towed to Bucks Towing in Shiprock, New Mexico, and placed in secured storage.

7. Most newer model vehicles are equipped with a Data Event Recorder (EDR) that can be accessed to determine what occurred mechanically within the vehicle just prior to and during an accident. Based on conversations with New Mexico State Police Officer Stan Lundy, there is no EDR in the Target Vehicle due to its age. However, Criminal Investigator Dean Goldtooth confirmed with your affiant that Upshaw’s personal mobile telephone is within the Target Vehicle. This device may provide data regarding GPS location, if Upshaw was accessing his device before, during, or after the crash, and potential photographs, videos, and other media that may provide details of the events that occurred before the crash.

8. Based on the information provided in this affidavit, your affiant believes that evidence items are located in the 1999 Honda Civic, bearing Colorado license plate number 632VIO, vehicle identification number (VIN) 2HGEJ8648XH555071. Your affiant believes that evidence of a crime can be found by conducting a search for physical items related to alcohol consumption, including but not limited to bottles, receipts of purchase, cans and other items known to hold alcoholic beverages within the same vehicle. It is also believed that documents indicating who possessed and used the vehicle are contained within and that photographs of both the interior and exterior of the vehicle will assist in the investigation.

9. This search warrant is for the purpose of searching the Target Vehicle for physical items described in paragraph 8 and securing the information held within any personal electronic devices contained within the vehicle.

10. The incident under investigation occurred within the exterior boundaries of the Navajo Indian

Reservation. Upshaw and Johnson are registered members of the Navajo Nation. Based upon the information received thus far, there is probable cause to believe there was a violation of Title 18, United States Code, Section 1112 and 1153, involuntary manslaughter committed in Indian Country, and that evidence of such crimes may be contained in the Target Vehicle.

11. Supervisory Assistant United States Attorney Kyle Nayback, District of New Mexico, reviewed and approved the affidavit requesting approval to search the Target Vehicle.

12. I swear that this information is true and correct to the best of my knowledge and belief.

Affiant Aly M
Special Agent Alyson Berry
Federal Bureau of Investigation

Subscribed and sworn before me
on this 22 day of September 2021


United States Magistrate Judge

ATTACHMENT A

PROPERTY TO BE SEARCHED

- 1) 1999 Honda Civic, bearing Colorado license plate number 632VIO, vehicle identification number (VIN) 2HGEJ8648XH555071, located at Bucks Towing, Shiprock, New Mexico.

ATTACHMENT B

PROPERTY TO BE SEIZED

- 1) Physical items related to alcohol consumption, including but not limited to bottles, receipts of purchase, cans and other items known to hold alcoholic beverages and documents pertaining to the possession and use of the vehicle;
- 2) Photographs of interior and exterior of vehicle.